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In The
# Supreme Court of the United States

STATE OF NEW MEXICO,

*Petitioner,*

vs.

ROGER SNELL,

*Respondent.*

**On Petition For Writ Of Certiorari To The New Mexico Court Of Appeals**

## PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED

ARE *MIRANDA* WARNINGS REQUIRED WHEN AN OFFICER ENGAGES IN ROUTINE QUESTIONING AT AN ACCIDENT SCENE WHILE BRIEFLY DETAINING A MOTORIST IN A PATROL CAR?

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## PETITION FOR WRIT OF CERTIORARI

Petitioner, the State of New Mexico, respectfully prays that a writ of certiorari issue to the New Mexico Court of Appeals to review its decision entered in this matter on June 13, 2007.

## OPINIONS AND ORDERS BELOW

The New Mexico district court's order suppressing statements is unreported. App. 19. The opinion of the New Mexico Court of Appeals, reprinted in the appendix hereto, App., *infra*, 1-18, is reported at 166 P.3d 1106. The New Mexico Supreme Court's issuance of a writ of certiorari to the New Mexico Court of Appeals, App. 23, is reported at 166 P.3d 1090, and its later quashing of the writ, App. 25, is reported at 183 P.3d 934. The New Mexico Supreme Court, in an unreported order, also denied the State's motion for rehearing. App. 27.

## JURISDICTION

The New Mexico Court of Appeals, affirming the district court's order of March 31, 2006, filed its opinion on June 13, 2007. App. 1. The New Mexico Supreme Court granted the State's petition for writ of certiorari on August 8, 2007, App. 21, and quashed the writ after full briefing and oral argument on April 18, 2008. App. 25. The New Mexico Supreme Court denied the State's motion for rehearing on May 15,

2008. App. 27. Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1257(a) (2000).

## CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Constitution of the United States, Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## STATEMENT OF THE CASE

In the early evening hours of March 25, 2005, Samantha Sanchez was traveling east from Raton, New Mexico on U.S. Highway 64-85 toward Clayton, New Mexico. Tr. at 11.[1] She was following two car lengths behind a pickup truck driven by Heather Nielsen. Both vehicles were proceeding at a low rate of speed because the highway was very slick and covered with ice and snow. *Id.* at 13. Ms. Sanchez saw a pickup truck being driven by Mr. Snell coming toward them in her lane. Mr. Snell's large Chevrolet "dually" pickup truck hit the Nielsen vehicle "head on." *Id.* at 13, 22. Ms. Sanchez turned into the ditch in an attempt to avoid a collision with Ms. Nielsen. The impact drove Ms. Nielsen's truck backward toward Ms. Sanchez and off the roadway. Mr. Snell's truck came to rest partially on and partially off the highway. *Id.* at 21. Ms. Nielsen died from injuries suffered in the collision.

Ms. Sanchez summoned help and remained at the scene. It continued to snow. *Id.* at 17. While Officer Eric Jones of the New Mexico State Police was interviewing Ms. Sanchez, Mr. Snell approached them. *Id.* at 18, 31. Mr. Snell attempted to interject himself into the interview and tried to get Ms. Sanchez to say that Ms. Nielsen had veered into his lane at the time of the accident. *Id.* Officer Jones told Mr.

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[1] Transcript of proceedings from the suppression hearing held in the state trial court on March 27, 2006.

Snell to leave, and Officer Alan Apodaca escorted him to a patrol car to get him out of the way and out of the weather. *Id.* at 34, 37. The officer cautioned Mr. Snell that continued interference with the investigation would result in his arrest. *Id.* at 34. New Mexico law requires a motorist to remain at the scene of an accident to render aid and provide information. N.M. Stat. Ann. §§ 66-7-201 & 203 (Michie 2004).

Subsequently, Officer Jones asked Mr. Snell, who was seated in the back seat of the patrol car, what happened. Mr. Snell admitted to driving between sixty and sixty-five miles per hour, an excessive speed for the road conditions. App. 4. Officer Jones unequivocally testified that Mr. Snell was not handcuffed or placed under arrest. Tr. at 34, 37, 40. The officers drove Mr. Snell to a motel in a nearby town. They later called him at the motel seeking additional information. App. 4.

Mr. Snell was later arrested and charged with homicide by vehicle in violation of N.M. Stat. Ann. § 66-8-101 (Michie 2004). Mr. Snell filed a motion to suppress arguing that he was subjected to a custodial interrogation while in the back seat of the patrol car for purposes of warnings under *Miranda v. Arizona*, 384 U.S. 436 (1966). The district court suppressed the statement made at the scene, as well as a statement Mr. Snell later made on the telephone at the motel as the fruit of the initial statement. The State appealed as a matter of right. N.M. Stat. Ann. § 39-3-3 (Michie 2006).

The New Mexico Court of Appeals analyzed the Fifth Amendment and noted the holding in *Berkemer v. McCarty*, 468 U.S. 420 (1984). App. 8-10. The court acknowledged that a motorist is not typically free to leave during a traffic investigation because such a detention constitutes a seizure for Fourth Amendment purposes. App. 8. The court also recognized that traffic investigations ordinarily do not implicate the Fifth Amendment in the same way as a custodial interrogation because such stops are generally brief, public, and inherently less coercive than a full custodial interrogation. App. 8-10. The court, however, held that Mr. Snell was in custody when he was questioned in the back seat of the patrol car and that *Miranda* warnings were necessary. App. 8. The court based its ruling on the conduct of the police in threatening Mr. Snell with arrest, physically escorting him to the patrol car, placing and locking him in the back seat, and questioning him either from the front seat of the vehicle or from a position that would have blocked his exit. App. 10-11. The court also affirmed the district court's suppression of the telephone statement as the fruit of the statement at the scene. App. 17. The State of New Mexico invokes this Court's jurisdiction to review the state court ruling pursuant to 28 U.S.C. § 1257. *See Arkansas v. Sullivan*, 532 U.S. 769, 771 n.1 (2001) (per curiam) (noting jurisdiction over a suppression order "notwithstanding the absence of final judgment in the underlying prosecution").

## REASONS FOR GRANTING THE PETITION

Officers are constitutionally required to provide *Miranda* warnings during a custodial interrogation. *Dickerson v. United States*, 530 U.S. 428, 432 (2000). In *Berkemer*, this Court held that *Miranda* warnings are not required during a typical investigatory detention because such encounters between the police and an individual are "temporary and brief," take place in "public, at least to some degree," and are not easily susceptible to improper interrogation techniques given the limited opportunity for an officer "to develop or implement a plan of this sort." 468 U.S. at 437-38 & n.27. Nonetheless, in response to the contention that the police "will simply delay formally arresting detained motorists, and will subject them to *sustained and intimidating interrogation* at the scene of their initial detention," this Court cautioned that *Miranda* warnings will be required if a detained individual "is subjected to treatment that renders him 'in custody' for practical purposes." *Id.* at 440 (emphasis added).

This dicta has created an ambiguity in the application of *Miranda*. The Fifth Amendment requires warnings when an individual has been formally arrested or has been subjected to the degree of restraint "associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (per curiam). The Fourth Amendment, under similar terminology, limits the scope of police investigations founded on reasonable suspicion conducted in accordance with *Terry v. Ohio*, 392 U.S. 1 (1968): "[T]he seizure cannot

continue for an excessive period of time or *resemble a traditional arrest*" without probable cause that an offense has been or is being committed. *Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 177, 185-86 (2004) (emphasis added) (citation omitted).

Courts and commentators alike have struggled with the manner in which the concept of arrest intersects the Fourth and Fifth Amendments. *See United States v. Perdue*, 8 F.3d 1455, 1463-66 (10th Cir. 1993); *Griffin v. United States*, 878 A.2d 1195, 1199 (D.C. 2005); *State v. Morgan*, 648 N.W.2d 23, 28 & n.8 (Wis. Ct. App. 2002); Thomas Gerry Bufkin, Comment, *Terry and Miranda: The Conflict Between the Fourth and Fifth Amendments to the United States Constitution*, 18 Miss. C. L. Rev. 199 (1997); Mark A. Godsey, *When Terry Met Miranda: Two Constitutional Doctrines Collide*, 63 Fordham L. Rev. 715 (1994).

The question seemingly left open by *Berkemer*, and on which both federal and state courts disagree, is whether *Miranda* extends to investigative detentions in which police officers use a greater than normal level of force in response to safety or other law enforcement concerns without effecting a *de facto* arrest. *Compare United States v. Martinez*, 462 F.3d 903, 909-10 (8th Cir. 2006) (applying *Miranda* to investigatory detentions), *cert. denied*, 127 S. Ct. 1502 (2007), *United States v. Newton*, 369 F.3d 659, 673 (2d Cir. 2004) (same), *United States v. Kim*, 292 F.3d 969, 976-77 (9th Cir. 2002) (same), *Perdue*, 8 F.3d at 1463-66 (same), *United States v. Smith*, 3 F.3d 1088, 1096-97 (7th Cir. 1993) (same), *and United States v.*

*Elias*, 832 F.2d 24, 26-27 (3d Cir. 1987) (same), *with United States v. Trueber*, 238 F.3d 79, 92-93 (1st Cir. 2001) (applying the Fourth Amendment *de facto* arrest standard to determine custody for purposes of *Miranda*), *and United States v. Leshuk*, 65 F.3d 1105, 1109-10 (4th Cir. 1995) (same).

While "specifically reject[ing] Fourth Amendment reasonableness as the standard for resolving *Miranda* custody challenges," the Second Circuit recognized a circuit split and declined to follow the different position taken by the First, Fourth, and, at that time, Eighth Circuits. *Newton*, 369 F.3d at 673; *accord* Katherine M. Swift, Comment *Drawing a Line Between Terry and Miranda: The Degree and Duration of Restraint*, 73 U. Chi. L. Rev. 1075, 1075 (2006) (noting "a circuit split over whether coercive *Terry* stops constitute *Miranda* custody").

This unresolved question is particularly troublesome in the context of on-the-scene questioning in a patrol car. Reflecting the general conflict between courts on the application of *Miranda* to brief investigatory detentions, courts are divided on the specific question of whether *Miranda* extends to questioning in a patrol car when there has been no arrest. This question is of great importance to the law enforcement community. In the context of traffic stops, officers need to be able to take safety precautions without sacrificing their investigative duties. In the context of traffic accidents, officers in the field are

under considerable time constraints to attend to all that is necessary at an accident scene; they are not routinely engaged in the investigation of criminal wrongdoing. New Mexico has unsoundly extended *Miranda* to brief questioning in a patrol car at an accident scene.

## I. Federal and state courts are divided over whether *Miranda* warnings must be given to motorists who are briefly detained in patrol cars, not placed under arrest, and then questioned.

The New Mexico Court of Appeals determined that *Miranda* applies to police-citizen encounters in which the level of restraint falls short of a *de facto* arrest. In other words, the court applied *Miranda* to an investigative detention governed by *Terry*.

Despite recognizing that the ultimate inquiry for *Miranda* is whether the level of restraint qualifies as the functional equivalent of an arrest, the court set out the *Terry* standard of whether "a reasonable person in [the defendant's] position would believe he was not free to leave the scene of the interrogation." App. 7. *See generally California v. Hodari D.*, 499 U.S. 621, 627-28 (1991) ("[A] person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.") (quoting *United States*

*v. Mendenhall*, 446 U.S. 544, 554 (1980) (Opinion of Stewart, J.)) (alteration in original). The New Mexico court determined that *Berkemer*'s holding that there was no custody during a traffic stop "is not a bright-line rule applying to all traffic investigations" and relied on the cautionary language in *Berkemer* to extend *Miranda* beyond *de facto* arrests. App. 10. The court then applied the *Terry* standard to require that the officer provide *Miranda* warnings for routine questioning, concluding that the encounter "was characterized by a show of force *that would have made any reasonable person believe he was not free to leave.*" App. 14 (emphasis added).

The court required warnings despite the fact that Mr. Snell was not handcuffed, not told he could not leave, and not placed under arrest. In fact, the officer implicitly informed Mr. Snell he was not under arrest by telling him that he *would be* placed under arrest if he continued to interfere with the traffic investigation, a reason for potential arrest unrelated to the cause of the accident and distinct from the subject of the questioning. Mr. Snell was thus aware that he was being placed in the patrol car in order to stop him from interfering in the traffic investigation. Further, when the officer placed him in the patrol car, Mr. Snell's departure from the scene was already limited by the weather, his statutory duty to remain at the scene, and his disabled truck. The court also failed to consider the fact that the officers took Mr.

Snell to a motel after the brief encounter, a factor typically deemed relevant to a *Miranda* custody inquiry. *See Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) ("At the close of a 1/2-hour interview respondent did in fact leave the police station without hindrance.") (per curiam); *see also Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004) ("At the end of the interview, Alvarado went home.").

New Mexico's expansion of *Berkemer* was based on two facts: the officer's threat of arrest and his placing Mr. Snell in the back seat of the patrol car prior to the brief questioning relating to the traffic accident. App. 10-11, 14. The threat of arrest, however, communicated to Mr. Snell that he was indeed not under arrest when he was placed in the patrol car. Once the threat of arrest is removed from the analysis, the court's opinion rests on the single fact that the officer placed Mr. Snell in the back seat. Again relying on *Terry* principles, the court emphasized that "the police did not invite Defendant to join them or make clear that the confinement in their car was at his discretion." App. 14. Had the court based the requirement of warnings on a *de facto* arrest standard, rather than extending *Miranda* to an investigative detention, there is no question that the brief detention in the patrol car would not have triggered *Miranda* warnings. *See Leshuk*, 65 F.3d at 1109-10 ("[D]rawing weapons, handcuffing a suspect, placing a suspect in a patrol car for questioning, or using or threatening to use force does not necessarily

elevate a lawful stop into a custodial arrest for *Miranda* purposes.").

Numerous courts have addressed the custody requirement of *Miranda* in the context of brief questioning in a patrol car, with greatly varying results. In *State v. Washington*, 402 S.E.2d 851, 852-53 (N.C. Ct. App.), *rev'd*, 410 S.E.2d 55 (N.C. 1991), an officer placed the defendant, a motorist, in his patrol car during a routine traffic stop, asked the defendant about weapons in the vehicle, obtained consent to search the vehicle, and asked the defendant about narcotics found during the search. The trial and intermediate appellate courts determined that, although the defendant's freedom of movement was involuntarily restricted, he was not in custody for purposes of *Miranda*. *Id.* at 853. The state's high court, however, reversed on the sole ground that the defendant was involuntarily locked in the back seat of a patrol car. 410 S.E.2d at 56 (adopting the dissenting opinion in the lower court); 402 S.E.2d at 853-54 (Greene, J., dissenting). New Mexico is thus in accord with North Carolina in holding that *Miranda* applies to the involuntary placement of a motorist in a patrol car, regardless of the length or intensity of the questioning or whether other restraints are used. The Utah Supreme Court applied a similar rule based on an officer's accusatory questions about the odor of marijuana on the person of a motorist stopped for speeding and placed in a patrol car, *State v. Mirquet*, 914 P.2d 1144, 1147-49 (Utah 1996), and an Alaska court has treated as determinative whether an officer

ordered or invited the defendant to sit in the back seat of a patrol car, *Rockwell v. State*, 176 P.3d 14, 21 (Alaska Ct. App. 2008).

The rule applied by New Mexico in this case is, however, a minority position. Courts, including those that extend *Miranda* beyond *de facto* arrests, have more commonly held that placement in a patrol car alone does not qualify as custody for purposes of *Miranda*. *United States v. Murray*, 89 F.3d 459, 462 (7th Cir. 1996); *accord United States v. Boucher*, 909 F.2d 1170, 1173-74 (8th Cir. 1990) ("We hold that Boucher was not in custody prior to the formal arrest which took place after [the officer's] routine questioning in the patrol car. . . ."); *State v. Herem*, 384 N.W.2d 880, 883 (Minn. 1986) ("[S]imply requiring defendant to sit in a police car for a short time, an act much less intimidating or coercive than an order delivered at gunpoint, did not take the situation beyond the realm of the ordinary traffic stop."); *State v. Gesinger*, 559 N.W.2d 549, 552-53 (S.D. 1997) ("After considering *Berkemer* in its entirety, and other cases addressing this issue, we conclude Gesinger was not subjected to custodial interrogation while seated in the patrol car under the totality of the circumstances present here."); *State v. Lancto*, 582 A.2d 448, 449 (Vt. 1990) ("[S]uch questioning is not necessarily coercive, absent some evidence that the police officer's actions were calculated to break the suspect's will.") (citation and quotation marks omitted).

In *Murray*, officers placed the defendant in a patrol car during a traffic stop based on his furtive movements and combativeness, and an officer then questioned the defendant about a gun found in the defendant's car. 89 F.3d at 461. The Seventh Circuit focused on the length of the detention, the nature and extent of questioning, and the coerciveness of police conduct in evaluating whether *Miranda* warnings were required. *Id.* at 462. Concluding that the questioning and detention were brief and that there was no police overreaching, the court observed with respect to the defendant being placed in a patrol car that "*Miranda* warnings are not required simply because questioning is conducted in a certain place." *Id.* The court held that the defendant was not restrained "in a manner *equivalent* to that associated with a formal arrest." *Id.*

Although a majority of courts does not view the place of questioning, by itself, as determinative, courts have established other bright-line rules relating to questioning in a police car. Many courts have created a rule that requires *Miranda* warnings during an investigatory detention whenever the police use handcuffs and place an individual in the back seat of a patrol car, apparently without regard to the reason for the precautionary measures, the length of the detention, or the extent or manner of questioning. *See, e.g., Dixon v. Commonwealth*, 613 S.E.2d 398, 401 (Va. 2005) (citing cases); *Commonwealth v. Damiano*, 660 N.E.2d 660, 662 (Mass. 1996) ("The fact that the trooper's initial questioning was not

hostile and was undertaken simply to find out what the defendant knew about what had happened does not excuse the failure to give *Miranda* warnings."). In *Dixon*, an officer handcuffed a motorist involved in a traffic accident because he was unruly toward officers and smelled of alcohol. 613 S.E.2d at 399. The court determined the motorist was in custody for purposes of *Miranda* once the officer placed him in the front passenger seat of a patrol car and locked the door, and the court required warnings for routine questions about the accident. *Id.* at 401. The court adopted a bright-line rule for handcuffs and detention in a patrol car but determined that "the presence of either of these factors, in the absence of the other, may not result in a curtailment of freedom ordinarily associated with a formal arrest." *Id.*

The Second Circuit, meanwhile, has adopted a bright-line rule for handcuffs alone, and although this rule was applied at a home interview, it would presumably apply to motorists as well. *Newton*, 369 F.3d at 676 ("Handcuffs are generally recognized as a hallmark of a formal arrest."). From the use of handcuffs, the court found custody within the meaning of *Miranda* even though the individual was "specifically advised that he was *not* being placed under arrest and that the restraints were being employed simply to ensure his own safety and that of the officers," *id.*, and even though the "seizure did not equate to a *de facto* arrest under the Fourth Amendment." *Id.* at 675. *Contra United States v. Elston*, 479 F.3d 314, 319-20 (4th Cir.) (concluding that a *Terry* stop did not

trigger *Miranda* warnings even though the officers drew their weapons and handcuffed the defendant), *cert. denied*, 127 S. Ct. 2151 (2007).

Other courts have focused on the length of detention in a patrol car, again apparently without regard to the length or nature of the questioning. One state court has held that an officer could not ask an individual involved in an accident the basic question of what had happened without providing warnings because the officer kept the individual at the scene for over thirty minutes, a significant part of which was in a patrol car. *Commonwealth v. Meyer*, 412 A.2d 517, 521-22 (Pa. 1980). In opposition to *Meyer*, another court declined to require warnings as a matter of law when the defendant was kept in a patrol car and intermittently questioned over the course of an hour following an accident. *Commonwealth v. Comolli*, 441 N.E.2d 536, 539 (Mass. App. Ct. 1982).

The New Mexico Court of Appeals' opinion appears to place New Mexico in conflict with its federal circuit. In *United States v. Jones*, 523 F.3d 1235 (10th Cir. 2008), involving similar but not identical facts,[2] the Tenth Circuit evaluated the questioning of an individual in a police car and applied a long line of federal constitutional authority to make its objective

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[2] Although Ms. Jones was asked to get in a patrol car, and Mr. Snell was placed there by one of the investigating officers (for reasons other than questioning), this distinguishing fact should be more important to a *Terry* analysis than a *Miranda* inquiry.

evaluation of the question of custody for purposes of *Miranda*. Among the court's observations were:

> Nothing in the record suggests [the agent's] conversation with Jones was marked by "prolonged accusatory questioning . . . likely to create a coercive environment from which an individual would not feel free to leave."

*Id.* at 1241-42 (quoting *United States v. Griffin*, 7 F.3d 1512, 1518 (10th Cir. 1993), which in turn cited *Berkemer*) (omission in original).

> Although some factors indicate possible police domination of the encounter, the totality of the circumstances suggests the opposite. Jones did encounter multiple agents, but she was not confronted by them simultaneously or aggressively . . . .

*Id.* at 1242.

> [T]he fact that most of the conversation took place inside [the agent's] unmarked car [is not] dispositive of the custody issue. Although the vehicle belonged to the agents, location alone does not compel the conclusion that a defendant is in custody, so long as his freedom was not curtailed *to a degree similar to arrest*. Police need not administer *Miranda* warnings simply because the questioning is conducted in a certain place, i.e., a patrol car.

*Id.* (quotation marks and citations omitted; emphasis added).

> In sum, the totality of the circumstances convinces us Jones was not in custody for *Miranda* purposes. A reasonable person in her position would not feel her liberty was restricted to a degree associated with formal arrest. [The agent] clearly told Jones she could freely walk away, his questioning focused mostly on [another suspect's] involvement, and the agents did not dominate the encounter to a degree associated with formal arrest. The conversation, as a result, was either a consensual encounter or, at most, a *Terry* stop. Neither though is enough to trigger the *Miranda* requirements.

*Id.* at 1244.

The Tenth Circuit's focus in *Jones* on the length and type of questioning, as opposed to the location in which it took place, substantially differs from the analysis of the New Mexico Court of Appeals. For the Tenth Circuit, *Jones* was not a change in direction but part of a consistent application of *Berkemer*. *See, e.g.*, *United States v. Hudson*, 210 F.3d 1184, 1191-92 (10th Cir. 2000); *United States v. Madrid*, 30 F.3d 1269, 1277 (10th Cir. 1994); *see also Perdue*, 8 F.3d at 1463-66 (extending *Miranda* to investigatory detentions with a greater show of force than existed here).

The New Mexico Court of Appeals' extension of *Miranda* to the preliminary investigation of a traffic accident is indicative of the confusion existing throughout the Nation about the reach of *Miranda*

and the meaning of *Berkemer*. This Court's cautionary language in *Berkemer* was specifically directed to a concern about "sustained and intimidating interrogation." However, neither the present case nor those cases cited above requiring *Miranda* warnings in a patrol car during a traffic investigation involved questioning of this nature.

## II. The relationship between *Terry* and *Miranda* in the context of traffic investigations is a recurring issue of nationwide importance.

According to the National Highway Traffic Safety Administration, 2,575,000 people were injured in traffic accidents in 2006, including 42,642 deaths. NHTSA, *2006 Traffic Safety Annual Assessment*, http://www-nrd.nhtsa.dot.gov/Pubs/810791.PDF. The New Mexico Department of Transportation reports that 49,318 vehicle collisions occurred in New Mexico during 2006. N.M. Dep't of Transp., *New Mexico Traffic Crash Information 2006*, at 2, http://www.unm.edu/~dgrint/annual/annrept06.pdf. Of these, 22,217 resulted in bodily injury, including 484 deaths. *Id.* These statistics demonstrate the great frequency with which officers in the field are required to respond to traffic accidents.

During the preliminary investigation of a traffic accident, officers must be able to act quickly to determine whether there are injuries, assess the cause for purposes of filing an accident report, and clear

debris to permit the continued flow of traffic. These circumstances are far removed from the "practice of incommunicado interrogation" and the use of "menacing police interrogation procedures" outlined in *Miranda*, 384 U.S. at 457. The application of *Miranda* in this context unduly interferes with legitimate police investigation. *See Hiibel*, 542 U.S. at 185 ("Asking questions is an essential part of police investigations.").

Officers at the scene of an accident will often need to place a motorist in a patrol car due to weather, *see State v. Martin*, 543 N.W.2d 224, 227 (N.D. 1996) ("It would also have been unreasonable, and potentially dangerous, for [the patrolman] to have asked Martin to stand outside during a winter storm answering questions about the accident."); *State v. George*, 408 S.E.2d 291, 297 (W. Va. 1991) (similar), or be required to use this or some other form of restraint to protect their safety. Officers should not have to operate at their peril in taking these precautions, yet that is the end result of the unpredictable and disparate manner in which federal and state courts have applied *Berkemer*.

Officers face a dilemma when *Miranda* is extended beyond *de facto* arrests. This dilemma is illustrated by the Tenth Circuit's discussion of the issue in the context of a traffic stop. In *Perdue*, officers were on perimeter security for the execution of a warrant to search a property containing large quantities of drugs and several weapons when they stopped an approaching car. 8 F.3d at 1458-59. The court held

that the officers acted within the proper scope of a *Terry* stop when, with their guns drawn, they ordered the defendant out of his car and on the ground based on a reasonable belief that the defendant may have been armed. *Id.* at 1462-63. Despite this rapidly developing situation and the need to quickly determine the defendant's status for officer safety purposes, however, the Tenth Circuit further held that the officers were required to administer *Miranda* warnings before asking the defendant the simple question of why he was on the property: "Police officers must make a choice – if they are going to take highly intrusive steps to protect themselves from danger, they must similarly provide protection to their suspects by advising them of their constitutional rights." *Id.* at 1465.

*Miranda* was not intended to require traffic officers to make this Hobson's "choice" between protecting their safety and jeopardizing, interrupting, or changing their reasonable and legitimate efforts in responding to a traffic accident or their reasonable and legitimate investigation during a traffic stop. In the words of one commentator, the expansion of *Miranda* to investigatory detentions "needlessly and dangerously impairs a *Terry* inquiry." Note, *Custodial Engineering: Cleaning Up the Scope of Miranda Custody During Coercive Terry Stops*, 108 Harv. L. Rev. 665, 668 (1995). The Nation's traffic officers need more certainty and guidance than currently exists. Amid the urgency of an accident scene, officers need

to know what circumstances trigger *Miranda* warnings.

## III. The New Mexico Court of Appeals improperly extended *Miranda* to on-the-scene questioning during a brief investigatory detention.

The New Mexico Court of Appeals held:

> The conduct of the police in this case in threatening Defendant with arrest, physically escorting him to the police car, placing him in the back seat, where he was locked in, leaving him there, and then returning to question him either from the front seat of the vehicle while he was locked in the back, or opening the back door and questioning him from a position that would have blocked his exit from the vehicle, exerted just the sort of pressure to which *Berkemer* refers.

App. at 10-11. Even accepting this view of the facts in this case, the court misapplied *Berkemer*. This extreme position – applying *Miranda* when an individual is placed in a patrol car at the scene of a traffic accident without force or sustained and intimidating questioning – cannot be squared with this Court's precedent.

The requirement of providing *Miranda* warnings during a brief investigatory detention is at odds with this Court's decision in *Miranda* to "give[ ] ample latitude to law enforcement agencies in the legitimate

exercise of their duties" and to allow the police to continue to "carry[ ] out their traditional investigatory functions." *Miranda*, 384 U.S. at 481. *Miranda* "is not intended to hamper the traditional function of police officers in investigating crime" and does not prevent "[g]eneral on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process." *Id.* at 477. "In such situations the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present." *Id.* at 478.

"It is settled that the safeguards prescribed by *Miranda* become applicable as soon as a suspect's freedom of action is curtailed to a 'degree associated with formal arrest.'" *Berkemer*, 468 U.S. at 440 (quoting *Beheler*, 463 U.S. at 1125); *see also Mathiason*, 429 U.S. at 495. The recognition in *Berkemer* that *Miranda* applies to the "functional equivalent of formal arrest," 468 U.S. at 442, is nothing more than this Court's similar determination that the Fourth Amendment's probable cause requirement extends beyond "technical arrests." *Dunaway v. New York*, 442 U.S. 200, 213 (1979); *see Florida v. Royer*, 460 U.S. 491, 515 (1983) (Blackmun, J., dissenting) ("In my view, it cannot fairly be said that, prior to the formal arrest, *the functional equivalent of an arrest* had taken place.") (emphasis added). An investigatory detention may become a *de facto* arrest when officers increase the level of restraint by placing an individual in a police-dominated environment characterized by sustained and intimidating interrogation. *See*

*Royer*, 460 U.S. at 503 (plurality opinion) ("As a practical matter, Royer was under arrest."). A similar level of restraint will likely trigger *Miranda* warnings. *Pennsylvania v. Bruder*, 488 U.S. 9, 11 n.2 (1988) (per curiam) (referring to "prolonged detention"). Short of a *de facto* arrest, however, this Court has noted in the Fourth Amendment context that brief investigatory detentions lack the "coercive aspects likely to induce self-incrimination." *Michigan v. Summers*, 452 U.S. 692, 702 n.15 (1981) (distinguishing *Dunaway* on this basis).

Thus, in accordance with this Court's Fourth Amendment jurisprudence, New Mexico and numerous other jurisdictions have misinterpreted *Berkemer* by extending *Miranda* beyond the *de facto* arrest context to brief investigatory detentions in which officers have been required to take reasonable precautionary measures for safety or other legitimate reasons. The First and Fourth Circuits are correct to apply the *de facto* arrest standard to *Miranda*'s custody determination. *See Trueber*, 238 F.3d at 92-93 (holding that the drawing of a weapon was not sufficient "to convert the investigatory stop into a de facto arrest"); *see also Leshuk*, 65 F.3d at 1109-10.

During an investigatory stop, officers are permitted to detain an individual for a reasonable amount of time to diligently pursue a means of investigation, *United States v. Sharpe*, 470 U.S. 675, 686-87 (1985), and, based on "reasons of safety and security," to "mov[e] a suspect from one location to another," *Royer*, 460 U.S. at 504 (plurality opinion). An officer

who reasonably and briefly detains an individual in a patrol car for legitimate investigative reasons, either with handcuffs or without them, has not effected a *de facto* arrest and, concomitantly, has not engaged in the coercive behavior likely to induce self-incrimination to which *Miranda* is directed. *See Berkemer*, 468 U.S. at 437 ("Fidelity to the doctrine announced in *Miranda* requires that it be enforced strictly, but only in those types of situations in which the concerns that powered the decision are implicated."). As this Court held in *Mathiason*, the place of questioning is not a controlling factor in determining custody. 429 U.S. at 495 ("Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect.").

In *Bruder*, this Court reiterated the holding in *Berkemer* that "ordinary traffic stops do not involve custody for the purposes of *Miranda*." 488 U.S. at 11. In short, the routine questioning attached to the investigation of a traffic accident has never been viewed by this Court as the sort of accusatory, secluded, prolonged interrogation that would warrant advice of rights under *Miranda*. "[A] noncustodial situation is not converted to one in which *Miranda* applies simply because a reviewing court concludes that, even in the absence of any formal arrest or restraint on freedom of movement, the questioning took place in a 'coercive environment.'" *Mathiason*, 429 U.S. at 495.

A State is free, of course, to grant expanded procedural rights to its citizens beyond those enumerated in the Federal Constitution. *Danforth v. Minnesota*, 128 S. Ct. 1029, 1038 (2008). Here, however, the court expressly determined that Mr. Snell did not preserve a state constitutional claim and limited its analysis to the Fifth Amendment. App. 6.

The New Mexico Court of Appeals misinterpreted and misapplied federal law and unduly interfered with brief on-the-scene questioning. The Nation's tens of thousands of traffic officers are under considerable time constraints to attend to all that is necessary at an accident scene. They are not routinely engaged in the investigation of criminal wrongdoing. It is unreasonable to expect them to give *Miranda* warnings to everyone detained at a scene for the statistically unlikely contingency a criminal prosecution will result.

*Miranda*'s safeguards are only applicable when an individual's freedom of action is restricted to a "degree associated with formal arrest." *Beheler*, 463 U.S. at 1125. Such was not the case here.

## CONCLUSION

For the foregoing reasons, this Court should issue its writ of certiorari to review the opinion of the New Mexico Court of Appeals.

Respectfully submitted,

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**IN THE COURT OF APPEALS**
**OF THE STATE OF NEW MEXICO**

Opinion Number: _____

Filing Date: **JUNE 13, 2007**

**NO. 26,655**

**STATE OF NEW MEXICO,**

Plaintiff-Appellant,

v.

**ROGER SNELL,**

Defendant-Appellee.

**APPEAL FROM THE DISTRICT COURT OF COLFAX COUNTY**
**Jay G. Harris, District Judge**

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## OPINION

**FRY, Judge.**

{1} The State appeals from an order suppressing two sets of statements Defendant made to the police during an investigation of a car accident involving Defendant and another motorist. Defendant made the first statements while being questioned in the back seat of a police vehicle. He made the second statements later that evening when a police officer telephoned Defendant in his hotel room. The trial court suppressed the first statements on the basis that they were made while Defendant was in custody and had not been informed of his rights as required by *Miranda v. Arizona*, 384 U.S. 436 (1966). The trial court also suppressed the second set of statements, which Defendant argued were both custodial and, regardless of custody, presumptively inadmissible and involuntary as a tainted product of the earlier *Miranda* violation.

{2} We affirm the suppression of the statements Defendant made in the back of the police car, because we conclude that under the facts presented in this case, Defendant was in custody. We also affirm the suppression of the statements Defendant made in his hotel room because the State failed to preserve its argument that they were voluntarily made and not otherwise tainted by the prior *Miranda* violation.

## BACKGROUND

{3} Defendant was involved in a head-on collision with another vehicle on the highway. The accident happened on a snowy evening in March, and the road was slick and covered with ice. A witness stated that she saw Defendant's pickup truck move out of his traffic lane into a lane of oncoming traffic and strike a vehicle head on. The driver of that vehicle suffered severe injuries and died shortly after she was taken to a hospital. Defendant was charged with homicide by vehicle, contrary to NMSA 1978, § 66-8-101(C) (2004). The criminal complaint alleged that he operated a motor vehicle while under the influence of intoxicating liquor and/or drugs, or in the alternative that he operated his vehicle carelessly and heedlessly in willful or wanton disregard of the rights or safety of others.

{4} When the police arrived at the scene, Officer Eric Jones began to question the witness. Defendant interjected, asking if the witness had seen the other driver move out of her lane and into Defendant's. Defendant's question appeared to be calculated to persuade the witness and the police that Defendant was not at fault. Officer Jones ordered Defendant to leave. Officer Alan Apodaca physically escorted Defendant away, and told Defendant that he would be arrested for obstruction if he kept talking to the witness. Officer Apodaca brought Defendant to Officer Jones's police vehicle, placed him in the back seat with the doors closed and locked, and left him there. After Officer Jones finished speaking with the

witness, he went to his police car and questioned Defendant about the accident. During that first set of questions, Defendant stated that he was going between sixty and sixty-five miles an hour when the accident occurred.

{5} Because Defendant's vehicle was disabled and he was traveling from out of town, the police arranged for Defendant to be taken to a hotel. Later that evening, Officer Jones called Defendant on the telephone to ask him a second set of questions about the accident. This time, Defendant said he did not remember how fast he was going and attempted to retract his prior statement that his speed was sixty to sixty-five miles an hour.

{6} Defendant filed a motion to suppress his first statements on the ground that they were the product of custodial interrogation that required the police to inform him of his *Miranda* rights. He moved to suppress the second statements on two grounds: first, as the product of custodial interrogation and, second, as statements that were presumptively inadmissible due to the taint of the earlier, unwarned statements. A hearing was held on Defendant's motion, at which both parties introduced evidence as to the circumstances surrounding Defendant's first statements. There was some uncertainty as to whether Officer Jones opened the door and stood outside the vehicle to interrogate Defendant, sat in the front of the vehicle and questioned Defendant as he was seated in the back, or had Defendant get out of the vehicle. But the trial court found that Defendant was seated in

the back of the vehicle while he was questioned, and concluded that a reasonable person who had been threatened with arrest and then placed in the back seat of a police car and interrogated would not feel free to leave. The trial court granted the Defendant's motion to suppress as to both the first and second sets of statements. No evidence was introduced at the hearing about the second statements, and neither party argued the merits of suppressing those statements. The State appeals the trial court's order granting the motion pursuant to NMSA 1978, § 39-3-3(B)(2) (1972) and Rule 12-201(A)(1) NMRA.

## DISCUSSION

{7} The standard of review for a suppression ruling is whether the trial court correctly applied the law to the facts when the facts are viewed in the light most favorable to the prevailing party. *State v. Harbison,* 2007-NMSC-016, ¶ 8, 141 N.M. 392, 156 P.3d 30. Under this standard, the trial court's factual determinations are subject to a substantial evidence standard of review, and its application of the law to the facts is subject to de novo review. *Id.* "Determining whether or not a police interview constitutes a custodial interrogation requires the application of law to the facts." *State v. Nieto,* 2000-NMSC-031, ¶ 19, 129 N.M. 688, 12 P.3d 442. We therefore review that determination de novo. *Id.*

{8} The Fifth Amendment to the United States Constitution, which applies to the states through the

Fourteenth Amendment, *see Malloy v. Hogan*, 378 U.S. 1, 6 (1964), secures a criminal defendant's right not to incriminate himself. Article II, section 15 of the New Mexico Constitution provides an analogous protection. Although Defendant argues that he is entitled to a state constitutional analysis based on the interstitial approach described in *State v. Gomez*, 1997-NMSC-006, 122 N.M. 777, 932 P.2d 1, Defendant failed to preserve his state constitutional claim below. In the trial court, Defendant did not argue that our state constitution provides greater protection than the federal constitution. *See id.* ¶ 23 (explaining that when a party asserts a state constitutional right that has not been interpreted differently than its federal analog, the party must assert in the trial court the reasons why the New Mexico constitutional provision should be interpreted more broadly than its federal counterpart). Therefore, we will limit our analysis to the rights provided by the Fifth and Fourteenth Amendments to the United States Constitution.

{9} The Fifth Amendment provides that "[n]o person shall be . . . compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. To ensure that a person suspected of a crime does not feel compelled to make statements to the police, the United States Supreme Court in *Miranda*, 384 U.S. at 444, held that prior to custodial interrogation, a person "must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to

the presence of an attorney, either retained or appointed." If a person is not informed of these rights, his unwarned statements cannot be used against him as substantive evidence at trial. *See id.*

{10} However, *Miranda* warnings are only necessary if a defendant is in police custody at the time of the interrogation; they are not required for non-custodial interrogations. *See Nieto,* 2000-NMSC-031, ¶ 20 (explaining that *Miranda* applies only when a person is in custody). Whether an interrogation is custodial depends on all of the surrounding circumstances, but the "ultimate inquiry" is whether there was a "restraint on freedom of movement of the degree associated with a formal arrest." *Id.* (*quoting Stansbury v. California,* 511 U.S. 318, 323 (1994) (per curium [sic])). A suspect is in custody for the purpose of *Miranda* if a reasonable person in his position would believe he was not free to leave the scene of the interrogation. *State v. Munoz,* 1998-NMSC-048, ¶ 40, 126 N.M. 535, 972 P.2d 847. Some of the factors relevant to whether a reasonable person would believe he was free to leave include "the purpose, place, and length of interrogation," along with "the extent to which the defendant is confronted with evidence of guilt, the physical surroundings of the interrogation, the duration of the detention, and the degree of pressure applied to the defendant." *Id.* (internal quotation marks and citation omitted). "The test is objective: the actual subjective beliefs of the defendant and the interviewing officer on whether the defendant was

free to leave are irrelevant." *Id.* (internal quotation marks and citation omitted).

**The Custodial Interrogation in the Police Car.**

{11} The trial court concluded that Defendant was in custody when he was questioned in the back seat of a police car. We agree that under the circumstances of this case, such questioning constituted custodial interrogation that triggered Defendant's constitutional right to receive *Miranda* warnings. Because the police did not advise Defendant of his rights before questioning him, the trial court properly suppressed the statements Defendant made during that interrogation.

{12} The State argues that Defendant was not entitled to *Miranda* warnings since his detention was part of a routine traffic investigation. In *Miranda,* the Supreme Court noted that its holding was not intended to implicate "[g]eneral on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process." 384 U.S. at 477. Subsequently, in *Berkemer v. McCarty,* 468 U.S. 420, 436-40 (1984), the Court held that *Miranda* warnings are generally not required when a defendant is subjected to roadside questioning during a routine traffic stop. While the fact that a defendant is not typically free to leave during a traffic stop means that his detention constitutes a seizure for Fourth Amendment purposes, *id.* at 436-37, investigatory detentions such as traffic stops "do not

implicate the Fifth Amendment in the same way as custodial interrogations" since investigatory detentions "are generally public, temporary, and substantially less coercive than custodial interrogations." *State v. Javier M.*, 2001-NMSC-030, ¶ 19, 131 N.M. 1, 33 P.3d 1.

{13} The essential difference, for *Miranda* purposes, between a traffic stop and a custodial interrogation is that a reasonable motorist detained during a traffic stop believes that his detention will be brief and open to public view.

> When a motorist is pulled over for a traffic stop, the motorist is subject only to an investigatory detention because the stop is presumptively temporary and brief. The motorist expects that he will only be obliged to spend a short period of time answering questions and then be allowed to continue on his way. The temporariness of such a stop is different from a station house interrogation which is prolonged, and in which the detainee often is aware that questioning will continue until he provides his interrogators the answers they seek. Moreover, a traffic stop is typically public and therefore reduces the ability of an unscrupulous policeman to use illegitimate means to elicit self-incriminating statements. Because the atmosphere surrounding such investigatory detentions is not so inherently coercive that the detainee feels compelled to speak, persons temporarily detained pursuant to such stops are not in custody for the purposes of *Miranda*.

*Javier M.*, 2001-NMSC-030, ¶ 19 (internal quotation marks and citations omitted); *see also Armijo v. State Through Transp. Dep't*, 105 N.M. 771, 773, 737 P.2d 552, 554 (Ct. App. 1987) ("Generally, custodial interrogation does not occur at a traffic stop based upon: (1) the routineness of the questions[,] (2) the generally brief detention[,] and (3) the fact that such stops are in the public view." (internal quotation marks and citations omitted)).

{14} However, this is not a bright-line rule applying to all traffic investigations, and if a "'motorist who has been detained pursuant to a traffic stop thereafter is subjected to treatment that renders him 'in custody' for practical purposes, he will be entitled to the full panoply of protections prescribed by *Miranda*.'" *Armijo*, 105 N.M. at 774, 737 P.2d at 555 (*quoting Berkemer*, 468 U.S. at 440). The essential question is whether the detention "exerts upon a detained person pressures that sufficiently impair his free exercise of his privilege against self-incrimination to require that he be warned of his constitutional rights." *Burkemer* [sic], 468 U.S. at 437. The conduct of the police in this case in threatening Defendant with arrest, physically escorting him to the police car, placing him in the back seat, where he was locked in, leaving him there, and then returning to question him either from the front seat of the vehicle while he was locked in the back, or opening the back door and questioning him from a position that would have blocked his exit from the vehicle,

exerted just the sort of pressure to which *Berkemer* refers.

{15} We disagree with the State that this case is like the traffic investigation in *State v. Greyeyes,* 105 N.M. 549, 734 P.2d 789 (Ct. App. 1987). In *Greyeyes,* an officer was called to the scene of a one-vehicle accident. *Id.* at 550, 734 P.2d at 790. When he arrived, he saw two men standing outside of a damaged truck by the side of the road. *Id.* The officer asked who owned the truck, who had been driving at the time of the accident, and how the accident occurred. *Id.* As the defendant was answering these questions, the officer noticed the smell of alcohol on his breath and asked if he had been drinking. *Id.* The defendant admitted that he had. *Id.* This Court held that under those circumstances, the defendant was not in custody for purposes of *Miranda. Greyeyes,* 105 N.M. at 551, 734 P.2d at 791.

{16} The factual differences between *Greyeyes* and this case demand a different result. At no point was the defendant in *Greyeyes* ever physically restrained or provided with any indication that the questioning would be anything other than a brief, on-the-scene investigation. The defendant in *Greyeyes* was at all times standing out on the open road. In contrast, in this case, the threat that Defendant would be arrested, combined with his subsequent placement in a locked police vehicle, meant that he was no longer subject to a simple investigatory traffic stop. Defendant's confinement in the circumstances of this case

constituted a detention that implicated Defendant's Fifth Amendment rights.

{17} We recognize that our Supreme Court has held that the bare fact that a defendant is questioned while in a police vehicle is in itself insufficient to constitute a custodial interrogation. *Munoz,* 1998-NMSC-048, ¶¶ 42-43. However, because here there are additional factors that would have caused a reasonable person in Defendant's position to believe that he was not free to leave, we conclude that this case is distinguishable from *Munoz.*

{18} In *Munoz,* two FBI agents went to the defendant's home and told him they wanted to speak with him about the death of a local man. *Id.* ¶ 3. The agents explained that they wanted to talk to the defendant away from his home and asked him to come with them. *Id.* Before the defendant got in the agents' car, the agents explained that the defendant was not required to go with them, that he did not have to talk to them, that he was not under arrest, that he would be free to leave at any time, and that they would bring him back to his home after the interview. *Id.* ¶ 5. The defendant consented to the interview and got in the car. *Id.* ¶¶ 5-6. The agents drove to an empty parking lot a short distance from the defendant's home and questioned him. *Id.* ¶¶ 6-7. The defendant confessed to the murder. *Id.* ¶ 11. At trial, he sought to suppress the confession because the agents did not inform him of his *Miranda* rights prior to the interrogation. *Munoz,* 1998-NMSC-048, ¶¶ 16, 39.

{19} Our Supreme Court held that the defendant was not in custody for the purposes of *Miranda*. *Munoz*, 1998-NMSC-048, ¶ 43. The Court noted that although the fact that the questioning took place in a police car might ordinarily lead to the conclusion that it was custodial, *id.* ¶ 42, several facts indicated that the defendant's freedom of movement was not restrained in a manner associated with a formal arrest. *Id.* ¶ 43. These included the fact that (1) the agents told the defendant that he was not under arrest, (2) they explained that he was not under any obligation to speak with them or answer their questions, (3) the agents told the defendant he could leave at any time, (4) the agents told the defendant they would take him back home after they were finished talking, (5) the agents did not handcuff the defendant, (6) the agents did not search the defendant, (7) there was no indication that the car doors were locked during the interrogation or that the defendant was otherwise prevented from leaving, (8) the interview was conducted in a public parking lot that was readily visible from a nearby thoroughfare, (9) the interview was conducted during daylight hours, and (10) after the interview was completed, the agents took the defendant home. *Id.*

{20} Most significant to *Munoz*'s conclusion that the questioning in the police vehicle was not custodial were those facts indicating that the defendant's presence in the vehicle was entirely voluntary. *See id.* ¶ 44 (relying on cases in which a defendant consented to accompany the police to the police station). In this

case, however, the police did not invite Defendant to join them or make clear that the confinement in their car was at his discretion. Rather, the trial court found that Defendant was threatened with arrest, physically escorted to the police vehicle, placed in the back seat, and instructed to remain there. At the hearing, Officer Jones admitted that when Defendant was confined to the back seat until the officer finished interviewing the witness, the doors would have been locked and Defendant would have been unable to leave. Whether Officer Jones questioned Defendant from the front of the police vehicle while Defendant was locked in the back, or while Jones was standing outside of the opened back door, blocking Defendant's exit from the vehicle, the facts of this case indicate that the interaction between the police and Defendant, unlike the interaction in *Munoz,* was characterized by a show of force that would have made any reasonable person believe that he was not free to leave.

{21} Furthermore, unlike in *Munoz,* where the interview took place during daylight hours in an area that was clearly visible to passers-by, here, the questioning took place after darkness had fallen and in the midst of a snowstorm that would have impaired visibility. Although we do not agree with Defendant's claim that the fact that it was snowing rendered him in custody since the road conditions would have made it more difficult to leave the scene, we do note that the snow, combined with the darkness, would have made it much less likely that people driving down the

road would be able to see what was taking place in the police car. This combination of circumstances sufficiently distinguishes this case from *Munoz*.

{22} The State argues that the accident and the snow storm, and not the conduct of the police, were the reason that Defendant was confined to the back seat of the police vehicle. The trial court, however, found otherwise, and there is substantial evidence in the record supporting that finding.

**The State Failed to Preserve Any Argument on the Voluntariness of Defendant's Statements in the Hotel Room.**

{23} Defendant moved to suppress his second set of statements, made when the police telephoned him in his hotel room, on two grounds: first, that the statements were unwarned custodial statements, and second, that regardless of whether they were custodial, they were tainted by Defendant's earlier unwarned statements. In a cursory response to Defendant's motion, the State asserted that Defendant's statements were not the product of custodial interrogation; however, the State did not respond in any way to Defendant's claim, based on *State v. Poller*, 93 N.M. 257, 599 P.2d 1054 (Ct. App. 1979), that if Defendant's first statements were taken in violation of his constitutional rights, any subsequent statements were presumed involuntary and the burden shifted to the State to prove that the subsequent statements were not tainted by the first ones.

Although the State now claims that the trial court never reached the question of whether the second set of statements should be suppressed, the State is incorrect. Defendant's written motion sought suppression of both sets of statements, and the trial court granted the motion.

{24} On appeal, Defendant abandons his argument that he was in custody when the officer called him on the phone in his hotel room. Instead, he relies on the argument that the *Miranda* violation as to the statements he made in the police car tainted the statements he later made in the hotel room, making them presumptively involuntary and therefore inadmissible. The State includes one sentence in its brief on appeal suggesting that Defendant's second statements were voluntary. However, the State did not preserve this argument below.

{25} In the trial court, the only arguable basis for preservation of this issue was the State's assertion in its response that "[t]he State vehemently disagrees with [D]efendant's arguments and interpretation of the law applicable to the issues addressed in [D]efendant's [m]otion." Such a blanket statement of general disagreement is inadequate to preserve any argument the State might have made that Defendant's statements were in fact voluntary or that the cases Defendant cited do not correctly state the applicable law as to the effect of an earlier *Miranda* violation on the admissibility of a later statement. *See* Rule 12-216 NMRA; *Sedillo v. N.M. Dep't of Pub. Safety*, 2007-NMCA-002, ¶ 22, 140 N.M. 858, 149 P.3d 955 ("In

order to preserve an issue for appeal, the issue must have been raised before the trial court such that it appears that the appellant fairly invoked a ruling of the trial court on the same grounds argued in the appellate court," (alterations in original, internal quotation marks and citation omitted)), *cert. granted*, 2007-NMCERT-001, 141 N.M. 164, 152 P.3d 151. Because the State failed to preserve its argument, we affirm the trial court's order suppressing the statements Defendant made when the police phoned him in his hotel room.

## CONCLUSION

{26} We hold that Defendant was in custody when he was questioned in the back of the police vehicle at the scene of the accident. Therefore, he was entitled to *Miranda* warnings before that questioning occurred. The State failed to preserve any error in the trial court's suppression of the second set of statements Defendant made on the phone in his hotel room. As a consequence, we affirm the suppression of both sets of statements made by Defendant after the accident and remand for further proceedings consistent with this opinion.

{27} **IT IS SO ORDERED.**

/s/ Cynthia A. Fry
**CYNTHIA A. FRY, Judge**

**WE CONCUR:**

/s/ A. Joseph Alarid
**A. JOSEPH ALARID, Judge**

/s/ Michael D. Bustamante
**MICHAEL D. BUSTAMANTE, Judge**

STATE OF NEW MEXICO
COUNTY OF COLFAX
EIGHTH JUDICIAL DISTRICT COURT

NO. 2005-96 CR

STATE OF NEW MEXICO,

Plaintiff,

vs.

ROGER SNELL
DOB: xx/xx/xxxx
SSN: xxx-xx-xxxx

Defendant.

**ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS DEFENDANT'S STATEMENTS**

(Filed Mar. 31, 2006)

THIS MATTER came before the Court on March 27, 2006, during the Preliminary Examination of the defendant on the charge of Homicide by Vehicle, the defendant having filed a Motion to Suppress Defendant's Statements prior to the Preliminary Examination. The Court heard evidence and argument of the State and counsel for the Defendant, and the Court being well advised in the premises:

IT IS HEREBY ORDERED that defendant's Motion to Suppress Defendant's Statements is granted.

/s/ Jay G. Harris pro tem 3/31/06
Honorable Jay G. Harris

Submitted by:

/s/ Harley E. Mortensen, Jr.
Harley E. Mortensen, Jr.
Assistant District Attorney

Approved:

/s/ Steven L. McConnell
Steven L. McConnell
Attorney for Defendant

IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO

August 8, 2007

NO. 30,517

STATE OF NEW MEXICO,

Plaintiff-Petitioner,

v.

ROGER SNELL,

Defendant-Respondent.

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of certiorari filed pursuant to Rule 12-502 NMRA, and the Court having considered said petition and being sufficiently advised, Chief Justice Edward L. Chávez, Justice Patricio M. Serna, Justice Petra Jimenez Maes, and Justice Richard C. Bosson concurring, Justice Pamela B. Minzner not participating;

NOW, THEREFORE, IT IS ORDERED that the petition hereby is GRANTED and a writ of certiorari shall issue to the New Mexico Court of Appeals; and

IT IS FURTHER ORDERED that a subsequent order shall be entered identifying the issue(s) upon which the petition is granted and setting forth instructions regarding a briefing schedule, if any.

IT IS SO ORDERED.

WITNESS, Honorable Edward L. Chávez, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 8th day of August, 2007.

(SEAL)

/s/ Kathleen Jo Gibson
Kathleen Jo Gibson, Chief Clerk
of the Supreme Court of the
State of New Mexico

IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO

August 8, 2007

NO. 30,517

STATE OF NEW MEXICO,

Plaintiff-Petitioner,

v.

ROGER SNELL,

Defendant-Respondent.

WRIT OF CERTIORARI

TO: New Mexico Court of Appeals

GREETINGS:

WHEREAS, petitioner did apply to this Court on July 3, 2007, for review of an opinion issued by the New Mexico Court of Appeals on June 13, 2007, in cause numbered 26,655 captioned *State of New Mexico v. Snell*; and

WHEREAS, the Supreme Court gave notice to the New Mexico Court of Appeals on July 3, 2007, in compliance with Rule 12-502 NMRA of the Rules of Appellate Procedure, that a petition for writ of certiorari had been filed in the above entitled cause; and

WHEREAS, a copy of the petition for writ of certiorari has been served on respondent in the above entitled cause.

NOW, THEREFORE, the writ of certiorari hereby is issued and the New Mexico Court of Appeals hereby is ordered to proceed no further in cause numbered 26,655 pending further order of this Court.

IT IS SO ORDERED.

WITNESS, Honorable Edward L. Chávez, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 8th day of August, 2007.

(SEAL)

/s/ Kathleen Jo Gibson
Kathleen Jo Gibson, Chief Clerk
of the Supreme Court of the
State of New Mexico

IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO

April 18, 2008

NO. 30,517

STATE OF NEW MEXICO,

Plaintiff-Petitioner,

v.

ROGER SNELL,

Defendant-Respondent.

ORDER

WHEREAS, this matter came on for consideration upon petition for writ of certiorari filed pursuant to Rule 12-502, and the Court having considered said petition and being sufficiently advised, issued its writ of certiorari on August 8, 2007; and

WHEREAS, having considered the petition, briefs, and oral argument by the parties, the judgment of the Court is that the writ shall be quashed as improvidently granted, Chief Justice Edward L. Chávez, Justice Patricio M. Serna, Justice Petra Jimenez Maes, Justice Richard C. Bosson, and Justice Charles W. Daniels concurring;

NOW, THEREFORE, IT IS ORDERED that the writ of certiorari issued on August 8, 2007, hereby is QUASHED; and

IT IS FURTHER ORDERED that the record proper, transcript of proceedings, and exhibits shall be returned to the New Mexico Court of Appeals.

IT IS SO ORDERED.

WITNESS, Honorable Edward L. Chávez, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 18th day of April, 2008.

(SEAL)

/s/ Kathleen Jo Gibson
Kathleen Jo Gibson, Chief Clerk
of the Supreme Court of the
State of New Mexico

**IN THE SUPREME COURT**
**OF THE STATE OF NEW MEXICO**
**May 15, 2008**

NO. 30,517

STATE OF NEW MEXICO,

Plaintiff-Petitioner,

v.

ROGER SNELL,

Defendant-Respondent.

**ORDER**

WHEREAS, this matter came on for consideration by the Court upon Motion for rehearing, and the Court having considered said motion and memorandum in support, and being sufficiently advised, Chief Justice Edward L. Chávez, Justice Patricio M. Serna, Justice Petra Jimenez Maes, Justice Richard C. Bosson, and Justice Charles W. Daniels concurring;

NOW, THEREFORE, IT IS ORDERED that the motion for rehearing hereby is **DENIED**.

IT IS SO ORDERED.

(SEAL)

WITNESS, The Hon. Edward L. Chávez, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 15th day of May, 2008.

/s/ Madeline Garcia
Madeline Garcia,
Chief Deputy Clerk